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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
FRESNO DIVISION

KEVIN HAGAN

Plaintiff,

v.

Valley State Prison Health Care CEO Raul  
Recarey, Valley State Prison Warden  
Landon Bird, and California Department  
of Corrections and Rehabilitation  
Secretary Kathleen Allison in their official  
capacities.

Defendants.

Case No.:

**COMPLAINT FOR TEMPORARY  
RESTRAINING ORDER AND INJUNCTION**

PARTIES

1  
2  
3  
4 1. Plaintiff Kevin Hagan ("Plaintiff") is an inmate within the California Department  
5 of Corrections and Rehabilitation ("CDCR").

6  
7 2. Defendants Raul Recarey ("CEO Recarey") and Landon Bird ("Warden Bird") are  
8 employees at Valley State Prison ("VSP"), the Health Care CEO and Warden,  
9 respectively, and are sued in their official capacities.

10 3. Defendant Kathleen Allison ("Secretary Allison") is the Secretary of CDCR and is  
11 sued in her official capacity.

12  
13  
14 JURISDICTION AND VENUE

15 4. Jurisdiction is conferred on this Court under 28 U.S.C. §§ 1343(a)(3) and  
16 1343(a)(4) because this suit is brought primarily under 42 U.S.C. § 1983. Jurisdiction is  
17 also conferred by 28 U.S.C. § 1331 because the cause of action arises under the  
18 Constitution and laws of the United States. Jurisdiction is conferred for the remaining  
19 issues by 28 U.S.C. § 1367 because they form part of the same case or controversy.  
20  
21 Jurisdiction is also conferred on this Court by 18 U.S.C. § 3626 because it includes a  
22 request for injunctive relief in a civil action related to prison conditions.  
23

24  
25 5. Venue is proper in the United States District Court, Eastern District of California  
26 under 28 U.S.C. § 1391(b)(2) because a substantial part of the events and omissions  
27 giving rise to this claim occurred there. Venue is also proper under 28 U.S.C. §  
28

1 1391(b)(1) because, Plaintiff is informed and believes and thereon alleges that some  
2 defendants reside in the Eastern District of California, and all defendants reside in  
3 California.  
4

5  
6  
7 FACTS

8 6. Plaintiff has a history of chronic back pain.

9  
10 7. On April 7, 2016, Plaintiff saw Dr. Frank Yoo ("Dr. Yoo") for his back injuries,  
11 who wanted to see the x-ray films before deciding on surgical treatment, and asked  
12 Plaintiff be treated with more potent pain medication as needed. (Exhibit K).  
13

14 8. On May 27, 2016, Dr. M. Santos ("Dr. Santos") documented that Plaintiff was  
15 "seen by neurosurgeon 5/19/2016 and was noted to have L5 screw that seems to be in  
16 the lateral recess [space in spinal canal toward the sides] where the traversing S1 nerve  
17 root should be, and compression deformity at L1. [emphasis added]" (Exhibit P).  
18

19 9. On June 14, 2016, Plaintiff's spinal fusion postsurgical changes were  
20 redemonstrated with hardware extending from L3-S1, and the changes appeared stable  
21 with a stable L1 compression fracture. (Exhibit AF).  
22

23 10. On July 4, 2016, Dr. Santos documented that Plaintiff has persistent low back  
24 pain with numbness on the plantar aspect of both feet and shooting pain on the right  
25 leg, Plaintiff stated he had difficulty walking due to the pain, morphine was discontinued  
26 because of possible drug diversion, and Plaintiff requests surgery even though  
27  
28

1 neurosurgeon stated it would likely improve his pain by about 20% from baseline.  
2 (Exhibit P).  
3

4 11. On July 14, 2016, Plaintiff was transported to Sharp Hospital complaining of  
5 severe pain in his back and chest. (Exhibit AC).  
6

7 12. At this visit, Plaintiff had an MRI showing no evidence of solid fusion between  
8 the vertebral bodies, L2-3 spinal canal and lateral recess stenosis with impingement  
9 (rubbing or pressure) of the traversing L3 nerve roots bilaterally, and left L5 neural  
10 opening narrowing with equivocal nerve root impingement. (Exhibit AD).  
11

12 13. On July 21, 2016, Plaintiff saw Dr. Yoo again due to back injuries. Dr. Yoo  
13 agreed to do surgery to remove the hardware: L3 to ilium (large broad bone forming  
14 upper part of each half of pelvis) posterior instrumentation (placement of screws and  
15 rods) and L2-3 bilateral laminotomies (removal of roof of spinal canal). (Exhibit A, J)  
16  
17

18 14. On August 3, 2016, Dr. Roberts downgraded the request for treatment from  
19 "urgent" to "routine." (Exhibit Q).  
20

21 15. Dr. Yoo noted that Plaintiff is doing miserably. He added the medical decision-  
22 making process: Plaintiff understands he is a challenging patient and that any further  
23 surgery may not be of any benefit to him, but he is so miserable that he has attempted  
24 suicide and would like to proceed with surgery. Plaintiff was told there might be a  
25 minimal possibility of only getting a small fraction of his pain resolved (less than 20%),  
26  
27  
28

1 but he still wants to proceed. Per Dr. Yoo, Plaintiff needs a minimal procedure at L2-3 or  
2 a giant procedure from T10 down to the ilium. (Exhibit J)

3  
4 16. Dr. Yoo requested authorization for all his recommendations: (1) Removal of  
5 all posterior instrumentation to give Plaintiff some back pain relief and definite relief of  
6 leg pain, (2) decompressive procedure with laminotomies to give him leg pain relief and  
7 possibly back pain relief, and (3) if need be, anterior lumbar interbody fusion and  
8 perhaps sacroiliac-iliac posterior fusion. (Exhibit J).  
9  
10

11 17. On December 6, 2016, Plaintiff saw Dr. Yoo again, who stated that he would  
12 put Plaintiff on the schedule for back surgery soon. Despite that, Plaintiff never  
13 received his back surgery. (Exhibit A).  
14

15 18. On January 11, 2017, the back surgery was denied. (Exhibit R).  
16

17 19. On January 31, 2017, Plaintiff was transported to Tri-City ED, complaining of  
18 chronic back pain (currently 10/10) not relieved with his medications, hematuria (blood  
19 in urine) since that morning, and the pain is radiating to the front, right side worse than  
20 left. (Exhibit AE).  
21

22 20. On April 11, 2017, urgent requests for an MRI of Plaintiff's lumbar spine with  
23 and without contrasts were approved. (Exhibit S).  
24

25 21. On September 18, 2017, Dr. Mossler documented Plaintiff's request to follow  
26 up with Dr. Yoo because his surgery was denied. (Exhibit T).  
27  
28

1 22. Plaintiff has suffered excruciating pain in his lumbar area. He has to rock back  
2 and forth to manage the pain. He has not received the back surgery that Dr. Yoo stated  
3 that he needs. On multiple occasions, Plaintiff has been informed that his operation  
4 was approved, only to hear later that it was denied.  
5

6 23. On February 15, 2018, a CT scan of Plaintiff's lumbar spine was approved.  
7  
8 (Exhibit U).

9 24. On March 29, 2018, a CT of Plaintiff's lumbar spine was done. It showed  
10 severe central canal and bilateral neural opening narrowing. (Exhibit AG).  
11

12 25. On April 30, 2018, an MR lumbar spine without contrast was done. New  
13 leftward curvature centered at L2-L3 and retrolisthesis (backward slippage) of L1 on L2  
14 and L2 on L3 was found. Also found was new severe central canal narrowing at L2-L3  
15 and mild central canal narrowing in the lower lumbar spine with probable compression  
16 of the left exiting L5 nerve root. (Exhibit AH).  
17

18 26. On May 2, 2018, Dr. Messler requested a bone density screening. (Exhibit V).  
19

20 27. On May 25, 2018, Dr. Santos requested Plaintiff receive the neurosurgery  
21 advised by Dr. Yoo. (Exhibit W).  
22

23 28. On June 5, 2018, Dr. Yoo revised his surgery recommendation to a lateral L3-  
24 L4 lumbar interbody fusion and posterior instrumented fusion with decompression and  
25 possible hyperlordotic (excessive curving inward) graft at L2-L3 to give him some back  
26 lordosis. Plaintiff also complained of numbness in his toes. (Exhibits Y and Z).  
27  
28

1 29. On July 17, 2018, the surgery was approved by Dr. Roberts. (Exhibit X).

2 30. On August 8, 2018, the IVMC denied the surgery for Plaintiff. (Exhibit AA).

3  
4 31. After this denial, Plaintiff attempted suicide again and needed 47 staples in his  
5 right arm.

6  
7 32. Plaintiff was then transferred to Salinas Valley State Prison ("SVSP"). There,  
8 they provided him methadone (pain medication) to mitigate the pain.

9  
10 33. On a pain scale of 0-10, 10 being the worst pain ever and zero (0) being no  
11 pain, the methadone reduced the pain from a 10 to a 7.

12  
13 34. Although methadone helped reduce the pain, Plaintiff still suffered back pain  
14 and had to rock back and forth continuously to manage the pain.

15  
16 35. Plaintiff was transferred to Atascadero State Hospital, where they kept him on  
17 the methadone, but suddenly transferred back to Richard J. Donovan, where he was  
18 taken off the methadone due to his complaining about stomach issues and requesting to  
19 get off it. (Exhibit C). However, the methadone was not replaced with anything else,  
20  
21 and the pain returned to at least an 8.

22  
23 36. On March 7, 2019, Plaintiff was informed that his gabapentin (nerve pain) will  
24 be tapered off. (Exhibit C). He was on duloxetine and was being prescribed ibuprofen  
25 and Tylenol.

26  
27 37. Also on March 7, 2019, Plaintiff stated a willingness to participate in physical  
28 therapy. (Exhibit C)

1       38. On March 15, 2019, Plaintiff complained that his pain is an eight (8) out of a  
2 10 daily and getting no comfort, and said he is filing a grievance against the doctor who  
3 took him off methadone. (Exhibit D).  
4

5       39. On March 27, 2019, Plaintiff saw his primary care provider (PCP) for a follow-  
6 up from chest pain and was advised narcotic pain medications are not used for chronic  
7 pain and was referred to physical therapy. (Exhibit C)  
8

9       40. On April 4, 2019, Plaintiff told a nurse that his current treatment was not  
10 enough to manage his pain, and the nurse said he does not meet the criteria to go back  
11 on methadone. (Exhibit C).  
12

13       41. On April 4, 2019, Plaintiff filed a health care grievance (602 HC) stating he is in  
14 severe pain in his lower back and down his right leg. He suffers daily without proper  
15 pain medication and requests adequate pain medication. (Exhibit D).  
16  
17

18       42. On April 23, 2019, the PCP documented narcotics would not be ordered for  
19 pain management, and Plaintiff was advised to continue with duloxetine (nerve pain  
20 medication) and acetaminophen. (Exhibit B)  
21

22       43. On May 29, 2019, Plaintiff refused physical therapy because it was too painful.  
23 (Exhibits B and G)  
24

25       44. On July 9, 2019, the PCP wrongly documented that Plaintiff did not appear in  
26 pain. Narcotics would not be prescribed, and Plaintiff, in desperation, agreed to take  
27 ibuprofen and nortriptyline (nerve pain medication). (See Exhibit B).  
28



1 45. Ever since he was transferred to VSP, Plaintiff's pain has continued, but he has  
2 not gotten pain medication or the surgery.

3  
4 46. On January 8, 2020, Plaintiff saw his PCP and expressed that he is in severe  
5 back pain and needs adequate pain medication. (Exhibit G).

6  
7 47. The PCP refused to prescribe pain medication. (Exhibit G).

8 48. On January 9, 2020, Plaintiff filed a grievance about the doctor visit on January  
9 8 and mentioned he was given Lyrica (nerve pain medication) and a nerve study in 2014.  
10 A specialist said he needed back surgery back in July 2016. (Exhibit F).

11  
12 49. On February 21, 2020, Plaintiff was seen by his PCP. The PCP noted that  
13 Plaintiff had an MRI of his spine on April 30, 2018, which suggested he needed surgery.  
14 A Request for Services was submitted for his surgery and was denied on June 22, 2018.  
15 The PCP advised Plaintiff to complete physical therapy, and then his case may be  
16 referred to the Pain Management Committee (PMC). (Exhibit G).

17  
18 50. On March 6, 2020, Plaintiff was seen by his PCP, and his back pain was  
19 reviewed. They discussed continuing mental health and physical therapy consultations.  
20 (Exhibit E).

21  
22 51. On March 17, 2020, the Chief Physician & Surgeon reviewed Plaintiff's  
23 grievance (Exhibit G) and wrongly stated that Plaintiff reported no sleep interruptions  
24 due to pain, performed his activities of daily living, and was able to pick up clothes from  
25 the floor and pull them back up. He could pick up clothes and pull them back up one  
26  
27  
28

1 time but cannot keep doing that. He also wrongly wrote that Plaintiff had good lateral  
2 flexion and rotation movement. He correctly stated that the extension limitations are  
3 most likely from instrumentation laminectomies. Also, that Plaintiff performed a  
4 straight leg raising test with no reproducible symptoms, but Plaintiff does not remember  
5 that. (Exhibit G).  
6

7  
8 52. Instrumentation laminectomies are often the result of hardware, which Dr.  
9 Yoo advised Plaintiff have surgery to get removed. (Exhibit A).  
10

11 53. On April 9, 2020, Plaintiff again saw a PCP examining his back. It was  
12 documented that he takes ibuprofen and amitriptyline (nerve pain medication). His  
13 back was examined, and despite him having recommendations from at least one  
14 specialist for surgery, the PCP did not document a medical indication for back surgery or  
15 additional medications. (Exhibit E).  
16

17  
18 54. On July 31, 2020, Plaintiff saw PCP and requested a referral for spinal surgery,  
19 orthotic shoes, hardware removal from his left thigh bone, pain medications, and  
20 physical therapy. A physical exam could not be performed because Plaintiff could not  
21 get out of his wheelchair. (Exhibit L).  
22

23  
24 55. PCP requested an orthopedic surgeon to evaluate Plaintiff's back issues  
25 further and ordered an x-ray of Plaintiff's left thigh bone. (Exhibit L).  
26

27 56. PCP determined orthotic footwear was not needed because Plaintiff cannot  
28 walk. (Exhibit L).

1 57. PCP denied Plaintiff's request for Lyrica, morphine, and methadone and  
2 placed orders only for ibuprofen. (Exhibit L).

3  
4 58. On August 4, 2020, a nurse documented Plaintiff had chronic low back pain,  
5 seven (7) surgeries from 2005-2010, and that his back pain has gotten progressively  
6 worse, radiating down to his right leg, affecting his daily life activities, and cannot walk.  
7 (Exhibit I).

8  
9 59. On August 13, 2020, an x-ray was done because of Plaintiff's left thigh bone  
10 pain. (Exhibit AI).

11  
12 60. On August 20, 2020, Plaintiff was seen by PCP for a Chronic Care Program  
13 appointment. Although Plaintiff is documented as refusing a physical examination, he  
14 does not remember refusing one. (Exhibit L).

15  
16 61. On August 26, 2020, an officer documented that Plaintiff spends 23 hours per  
17 day on his bunk, wants to be seen by PMC to get adequate pain medications, and  
18 attends chow and ducats but does not participate in the dayroom or yard activities.  
19 (Exhibit O).

20  
21 62. The officer also documented that Plaintiff has been on his pain medications  
22 for two (2) years. (Exhibit O).

23  
24 63. On August 28, 2020, Plaintiff saw Dr. Farr, a board-certified orthopedic  
25 surgeon with a fellowship in spine surgery. (Exhibits H and AB).

1           64. Dr. Farr documented stenosis (a medical condition where the spinal canal  
2 narrows and compresses the nerves and blood vessels at the level of the lumbar  
3 vertebrae) at the L2-L3 level with prior fusion at the L3-L4, L4-L5, and L5-S1. He  
4 documented that Plaintiff has difficulty with his walking pattern, using a wheelchair and  
5 an assistive device for walking. He recommended repeat MRI, most likely extending the  
6 fusion at L2-L3, that hardware removal could be helpful; Plaintiff needs an  
7 Electromyography ("EMG") nerve conduction study (measures muscle response to a  
8 nerve's stimulation of the muscle). He also believed that Plaintiff will eventually need a  
9 spinal cord stimulator (device that sends low levels of electricity into the spinal cord to  
10 relieve pain). For now, a CT scan of the lumbar to confirm there is actual fusion taken  
11 place before removing the hardware. (Exhibit H).

12           65. On September 25, 2020, Plaintiff saw his PCP for a follow-up with orthopedics.  
13 Noted that Plaintiff has a history of seven back surgeries, and there is a high risk of  
14 worsening back issues with additional surgeries and low potential for improvement.  
15 Plaintiff's back pain will be conservatively managed and will continue to take Motrin and  
16 Tylenol for pain. (Exhibit L).

17           66. On November 3, 2020, Plaintiff was seen by PCP to discuss topical  
18 medications, and it was recommended he continue using Tylenol and Capsaicin cream.  
19 (Exhibit N).

1           67. On November 15, 2020, Plaintiff submitted a Reasonable Accommodation  
2 Request asking for surgery because his constant shoulder pain makes using the  
3 bathroom hard. He noted that he mentioned this to Dr. Son. Dr. Son said he must file  
4 paperwork to go to court to do anything. (Exhibit AO).  
5

6           68. On November 16, 2020, Plaintiff was interviewed and again stated his  
7 shoulder was in pain and his awareness of the Americans with Disabilities Act ("ADA")  
8 assistant workers and the shower chair available in the housing unit. (Exhibit AP).  
9  
10

11           69. On January 8, 2021, Plaintiff was seen by the PCP in the Triage and Treatment  
12 Area ("TTA") for complaints of lower back and shoulder pain, notes indicate that he was  
13 given education on diet and weight loss recommendations, and ketorolac back  
14 injections were ordered. (Exhibit M). Ketorolac injections are not supposed to be done  
15 longer than five (5) days.  
16  
17

18           70. On February 21, 2021, an order for gabapentin was placed. (Exhibit M)

19           71. On February 22, 2021, Plaintiff was seen by the PCP in the TTA, who did not  
20 document that a PMC review was medically indicated. (Exhibit M).  
21

22           72. On February 23, 2021, Plaintiff returned from a "higher level of care," and the  
23 on-call provider ordered gabapentin and Capsaicin cream for his lower back pain.  
24 (Exhibit AS).  
25  
26  
27  
28

1 73. On February 24, 2021, Plaintiff filed a grievance noting he was given adequate  
2 pain medication at the Madera Community Hospital and is in severe pain now and needs  
3 to see a specialist. (Exhibits AR and AV).  
4

5 74. Also on February 24, 2021, Plaintiff saw his PCP for admission into the  
6 Outpatient Housing Unit. Noted was his long history of chronic lower back pain status  
7 post L2-3 fusion and the significant narcotics he was given while in the acute care  
8 hospital with COVID-19, pneumonia, and respiratory failure. His PCP explained that  
9 narcotics are not indicated for chronic pain management. His pain was to be managed  
10 stepwise with non-steroidal anti-inflammatory drugs (NSAIDs), acetaminophen, and  
11 possibly tricyclic antidepressants. The PCP ordered naproxen (NSAID) for lower back  
12 pain. (Exhibit AS).  
13  
14  
15

16 75. On March 8, 2021, Plaintiff's PCP ordered Tylenol for lower back pain. (Exhibit  
17 AS).  
18

19 76. On March 10, 2021, Plaintiff was seen by the PCP, who ordered a lumbar  
20 spinal MRI. (See Exhibit AK).  
21

22 77. On March 16, 2021, Plaintiff's requests for medication, a specialty referral,  
23 shoulder surgery, and accommodations were denied. (Exhibit AN).  
24

25 78. On March 17, 2021, Plaintiff received a response to the Reasonable  
26 Accommodation Panel that provided no interim accommodation because he could move  
27 and had his wheelchair. (Exhibit AU).  
28

1 79. On March 19, 2021, a doctor's request for EMG for complaints of low back  
2 pain was submitted and approved. (Exhibit M).

3  
4 80. On March 22, 2021, Plaintiff appealed that decision asking to see a specialist  
5 and have the surgery if needed. (Exhibit AM).

6  
7 81. On April 5, 2021, Plaintiff was seen by his PCP and was noted discharged from  
8 the Outpatient Housing Unit. His complaint then was back pain with right leg sciatica  
9 (pain radiating down along the sciatic nerve) managed with gabapentin, naproxen,  
10 Tylenol, and Capsaicin cream. (Exhibit AS).

11  
12 82. On April 14, 2021, Plaintiff filed a grievance saying he was in severe pain, had  
13 just spent 37 days in Outpatient Housing Unit ("OHU"), and was not given adequate pain  
14 medication and that he got his 1824 Reasonable Accountability Request sheet back.  
15 They failed to do the Armstrong Remedies Plan on him. (Exhibit AT).

16  
17 83. On April 28, 2021, Plaintiff filed an appeal because he was not satisfied with  
18 his response, and he suffers every day, and an investigation should have occurred into  
19 violations because he is ADA. (Exhibit AT).

20  
21 84. On April 29, 2021, the institutional level denied Plaintiff's request for pain  
22 medication and to see a specialist. (Exhibit AS).

23  
24 85. On May 2, 2021, Plaintiff filed an appeal stating he was in severe pain, 8/10  
25 sometimes 10/10, and that he has told his doctors every time he has seen them and  
26 asks for help. (Exhibit AR).

1 86. On May 5, 2021, Plaintiff's lumbar spine x-ray was completed. (Exhibit AK).

2 87. On May 10, 2021, Plaintiff was seen by PCP, where his lumbar spinal x-ray  
3 results were reviewed. He was told to stay with his treatment of omeprazole (acid  
4 reducer) and ibuprofen. (Exhibits AK).

5  
6 88. On May 20, 2021, Plaintiff filed a grievance mentioning he complained on May  
7 9, 2021, and May 19, 2021, about his severe back pain and the doctor not doing  
8 anything about it, and requesting an investigation into the violation of his civil rights.  
9 (Exhibit AX).

10  
11 89. On May 27, 2021, Plaintiff submitted a Health Care Services Request form  
12 regarding his pain. (Exhibit AK).

13  
14 90. On May 28, 2021, Plaintiff was seen by PCP and reminded of the upcoming  
15 nerve study and EMG with neurology. (Exhibit AK).

16  
17 91. On June 2, 2021, Plaintiff was seen by PCP. It was noted that he would  
18 continue gabapentin while Tylenol was adjusted for better pain coverage. Orders for a  
19 nerve study and EMG were approved pending scheduling. Physical therapy was  
20 approved, but the frequency was limited due to therapist availability. (Exhibit AL).

21  
22 92. On June 3, 2021, Plaintiff's request for a CT scan, MRI, and nerve conduction  
23 study was denied. (Exhibit AJ).

24  
25 93. On June 4, 2021, Plaintiff saw the nurse for back and shoulder pain  
26 complaints. (Exhibit AL).



1 94. On June 24, 2021, Plaintiff's appeal for medication and to see a specialist was  
2 denied at the headquarters level. (Exhibit AQ).

3  
4 95. In June 2021, a nerve study was done and Plaintiff was determined to have  
5 nerve damage and immediately placed on Lyrica.

6  
7 96. On October 4, 2021, a PCP noted that Plaintiff would be referred to a physical  
8 therapist and is awaiting neurosurgery consultation. (Exhibit AW).

9  
10 97. On October 5, 2021, Plaintiff's appeal regarding his severe pain, his PCP  
11 refusing to do anything to relieve his pain, and asking for an investigation into the  
12 violation of his civil rights was denied. (Exhibit AW).

13  
14 98. A CT scan and MRI were performed in March 2022.

15 99. As the Health Care CEO at VSP, Warden at VSP, or Secretary of CDCR,  
16 defendants CEO Recarey, Warden Bird, and Secretary Allison, respectively, have the  
17 power to order that Plaintiff be provided his surgery or pain medications, but have not.  
18

19  
20  
21 ***EXHAUSTION OF ADMINISTRATIVE REMEDIES***

22 100. Insofar as required, Plaintiff has exhausted his administrative remedies  
23 under the Prison Litigation Reform Act, 42 U.S.C. § 1997e.  
24

25 101. Plaintiff has exhausted his required remedies under the Government Claims  
26 Act, Claim 21005914. His claim was rejected on December 22, 2021.  
27  
28

**COUNT 1 – DELIBERATE INDIFFERENCE TO SERIOUS MEDICAL NEEDS**

102. Plaintiff re-alleges and re-incorporates paragraphs 6 through 99.

103. The government's failure to meet its "obligation to provide medical care for those whom it is punishing by incarceration," can constitute an Eighth Amendment violation cognizable under § 1983. *Estelle v. Gamble*, 429 U.S. 97, 103–05 (1976). To prevail on § 1983 claim for inadequate medical care, a plaintiff must show "deliberate indifference" to "serious medical needs." *Id.* at 104. This includes "both an objective standard—that the deprivation was serious enough to constitute cruel and unusual punishment—and a subjective standard—deliberate indifference." *Snow v. McDaniel*, [681 F.3d 978, 985 (9th Cir. 2012), overruled in part on other grounds by *Peralta v. Dillard*, 744 F.3d 1076 (9th Cir. 2014) (en banc)].

104. Plaintiff saw a specialist who said he needed surgery. He saw another one who said he needed surgery. He has been denied repeatedly. He has repeatedly informed the prison of his pain and received inadequate pain medications. When he was taken off the methadone due to his request, he thought he would be put on something else instead of nothing. Plaintiff has been suffering for years, despite his repeated complaints to prison staff.

105. As a result of not being provided his back surgery and pain medications due to the deliberate indifference of prison staff, Plaintiff lives every day in excruciating back

1 pain, violating his rights under the Eighth and Fourteenth Amendments against cruel  
2 and unusual punishment.

3  
4  
5 **COUNT 2 – NEGLIGENCE**

6 106. Plaintiff re-alleges and re-incorporates paragraphs 6 through 99.

7  
8 107. Plaintiff's status as an inmate in CDCR creates a level of dependency, in  
9 which inmates detrimentally rely on prison staff for protection from other inmates. That  
10 creates a "special relationship" and establishes a duty of care for the prison staff to  
11 protect Plaintiff. *Giraldo v. California Dep't of Corr. Rehab.*, 168 Cal. App. 4th 231, 252-  
12 53, 85 Cal. Rptr. 3d 371, 387 (2008).  
13  
14

15 108. Plaintiff saw a specialist who said he needed surgery. He saw another one  
16 who said he needed surgery. He has been denied repeatedly. He has repeatedly  
17 informed the prison of his pain and received inadequate pain medications. When he  
18 was taken off the methadone due to his request, he thought he would be put on  
19 something else instead of nothing. Plaintiff has been suffering for years, despite his  
20 repeated complaints to prison staff.  
21  
22

23 109. As a result of not being provided his back surgery and pain medications,  
24 Plaintiff lives every day in excruciating back pain from the negligence of prison staff.  
25  
26  
27

28 **REQUEST FOR TEMPORARY RESTRAINING ORDER**

1 110. Plaintiff has suffered and will continue to suffer excruciating pain if  
2 Defendants do not have to order his surgery and allow him pain medications.  
3

4 111. Based on the time legal remedies would take and the continuing severe pain,  
5 there is no adequate remedy at law.  
6

7 112. Plaintiff has a substantial likelihood of prevailing on the merits because of  
8 the recommendations of two specialists, his repeated complaints about his severe pain,  
9 and the prison's failure to address it.  
10

11 113. The injury faced by Plaintiff outweighs the harm sustained by Defendants if  
12 the TRO were granted. The injury faced by Plaintiff is excruciating pain in his back. In  
13 contrast, Defendants would face little to no harm approving the surgery and pain  
14 medications.  
15

16 114. Issuing a TRO would not hurt the public interest. Neither the defendants, the  
17 public, nor other inmates would experience a problem with Plaintiff getting his back  
18 surgery, pain medications, and finally having relief. On the contrary, enforcing  
19 constitutional rights serves the public interest.  
20

21 115. Plaintiff can post a bond under Federal Rule of Civil Procedure 65(c)  
22 depending on the amount.  
23  
24

25 REQUEST FOR RELIEF

26 Plaintiff requests this Court grant the following relief:  
27

- 28 1. Set his application for injunction for hearing at the earliest possible time.

2. Issue a temporary restraining order until a hearing can be held, requiring Defendants order Plaintiff receive the back surgery recommended by Dr. Yoo in ¶ 28 and pain medications.

3. After the hearing is held, issue an injunction requiring Defendants to order Plaintiff receive the back surgery recommended by Dr. Yoo in ¶ 28, and pain medications.

4. Cost of prosecuting these claims with attorney fees under 42 U.S.C. § 1988, against all Defendants.

5. Any other relief that the Court, in exercising its wisdom and judgment, deems proper.

DATED: April 25, 2022.

By: s/ Benjamin Rudin  
BENJAMIN RUDIN  
Attorney for Plaintiff  
Kevin Hagan

I, KEVIN HAGAN,

1. Have reviewed the complaint,
2. Know and believe all the allegations I personally know of to be true,
3. Believe no allegations are outside my personal knowledge. However, if they are, I believe them true based on specified information or documents.

I declare under penalty of perjury under the United States and California laws that the foregoing is true and correct—dated this 2 day of MAY 2022.

  
KEVIN HAGAN, Declarant